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11 Attorneys for Defendants  
ZINPRO CORPORATION, individually and doing business as  
12 360CUT and IMPACT LABS, INC., individually and doing  
business as 360CUT  
13  
14

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF ALAMEDA**

17 **ENVIRONMENTAL RESEARCH**  
18 **CENTER, INC., a California non-profit**  
19 **corporation**

20 **Plaintiff,**  
21 **vs.**

22 **ZINPRO CORPORATION, individually**  
**and doing business as 360CUT; IMPACT**  
23 **LABS, INC., individually and doing**  
**business as 360CUT; and DOES 1-100**

24 **Defendants.**  
25  
26  
27  
28

**CASE NO. RG17859764**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 9, 2017  
Trial Date: None set

1     **1. INTRODUCTION**

2           **1.1**     On May 9, 2017, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-  
3 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a  
4 Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the provisions  
5 of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against  
6 Zinpro Corporation, individually and doing business as 360Cut and Impact Labs, Inc.,  
7 individually and doing business as 360Cut (collectively “Zinpro/Impact Labs”) and Does 1-100  
8 (hereinafter individually referred to as “Defendant” or collectively as “Defendants”).  
9 Thereafter, an Amended Complaint was filed (the operative Complaint referred to hereinafter  
10 as the “Complaint”). In this action, ERC alleges that a number of dietary supplement products  
11 manufactured, distributed, or sold by Defendants contain lead and/or cadmium, chemicals listed  
12 under Proposition 65 as carcinogens and reproductive toxins, and expose consumers to these  
13 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter  
14 individually as a “Covered Product” or collectively as “Covered Products”) referred to in the  
15 Proposition 65 Notices and allegedly containing the reference substances are: 1) 360°Cut  
16 Performance Supplements 360Nitro Drive Candy Tarts (lead), (2) 360°Cut Performance  
17 Supplements 360Nitro Drive Cool Blue Razz (lead), (3) 360°Cut Performance Supplements  
18 360PRE Pre-Workout Activator Pineapple Passion (lead), (4) 360°Cut Performance  
19 Supplements 360PRE Pre-Workout Activator Cotton Candy (lead), (5) 360°Cut Performance  
20 Supplements 360PRO Whey Premium Whey Protein Performance Blend Chocolate Silk (lead,  
21 cadmium), (6) 360°Cut Performance Supplements 360Nitro Drive Green Apple (lead), (7)  
22 360°Cut Performance Supplements 360Sport BCAA & MCT Formula Mango (lead), (8)  
23 360°Cut Performance Supplements 360Amino Energize BCAA And Natural Energy Formula  
24 Cherry Limeade (lead), (9) 360°Cut Performance Supplements 360Amino Energize BCAA And  
25 Natural Energy Formula Green Apple (lead), (10) 360°Cut Performance Supplements  
26 360Amino Energize BCAA And Natural Energy Formula Watermelon (lead), (11) 360°Cut  
27 Performance Supplements 360Pump Stimulant-Free Pump Enhancer Unflavored (lead), and  
28

(12) 360°Cut Performance Supplements 360Amino Energize BCAA And Natural Energy Formula Peach Lemonade Iced Tea (lead).

**1.2** ERC and Zinpro/Impact Labs are hereinafter referred to individually as a “Party” or collectively as the “Parties.”

**1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

**1.4** ERC alleges that Zinpro/Impact Labs are each a business entity each of which qualifies as a “person in the course of business” within the meaning of Proposition 65 and that they manufacture, distribute, and/or sell the Covered Products.

**1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation dated February 24, 2017 and May 26, 2017 that were served on the California Attorney General, other public enforcers, and Zinpro/Impact Labs (“Notices”). True and correct copies of the 60-Day Notices dated February 24, 2017 and May 26, 2017 are attached hereto as **Exhibits A and B** and incorporated herein by reference. More than 60 days have passed since the Notices were served on the Attorney General, public enforcers, and Zinpro/Impact Labs and no designated governmental entity has filed a complaint against Zinpro/Impact Labs with regard to the Covered Products or the alleged violations.

**1.6** ERC’s Notices and Complaint allege that use of the Covered Products exposes persons in California to lead and/or cadmium without first providing clear and reasonable warnings in violation of California Health and Safety Code section 25249.6. Zinpro/Impact Labs denies all material allegations contained in the Notices and Complaint.

**1.7** The Parties have entered into this Consent Judgment in order to settle, compromise, and resolve disputed claims and thus avoid prolonged and costly litigation. By execution of this Consent Judgment, Zinpro/Impact Labs do not admit any violation of Proposition 65 and specifically deny committing any such violation. Nothing in this Consent Judgment shall be construed as an admission by Zinpro/Impact Labs of any fact, issue of law or

1 violation of law, nor shall compliance with the Consent Judgment constitute or be construed as  
2 an admission by Zinpro/Impact Labs of any fact, issue of law, or violation of law. Nothing in  
3 this Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that  
4 Zinpro/Impact Labs may have in any other future legal proceeding. However, this paragraph  
5 shall not diminish or otherwise affect the obligations, responsibilities and duties of  
6 Zinpro/Impact Labs under this Consent Judgment. Notwithstanding the allegations in the  
7 Notices and Complaint, Zinpro/Impact Labs maintains that it has not knowingly manufactured,  
8 or caused to be manufactured, the Covered Products for sale in California in violation of  
9 Proposition 65.

10 **1.8** Nothing in this Consent Judgment nor compliance with this Consent Judgment  
11 shall constitute or be construed as an admission by any of the Parties or by any of their respective  
12 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
13 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
14 issue of law, or violation of law.

15 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall  
16 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
17 current or future legal proceeding unrelated to these proceedings.

18 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered as  
19 a Judgment by this Court. The date for compliance with the injunctive provisions of this  
20 agreement is ninety (90) days from the Effective Date ("Compliance Date").

## 21 **2. JURISDICTION AND VENUE**

22 For purposes of this Consent Judgment and any further court action that may become  
23 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
24 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
25 over Zinpro/Impact Labs as to the acts alleged in the Complaint, that venue is proper in Alameda  
26 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
27 resolution of all claims up through and including the Compliance Date which were or could have  
28 been asserted in this action based on the facts alleged in the Notices and Complaint.



1     **3.     INJUNCTIVE RELIEF**

2             Beginning on the Compliance Date, Zinpro/Impact Labs shall be permanently enjoined  
3 from manufacturing for sale in the State of California, “Distributing into the State of  
4 California”, or directly selling in the State of California, any of the Covered Products. As used  
5 in this Consent Judgment, the term “Distributing into the State of California” shall mean to  
6 directly ship a Covered Product into California for sale in California or to sell a Covered  
7 Product to a distributor that Zinpro/Impact Labs knows or has reason to know will sell the  
8 Covered Product in California.

9     **4.     SETTLEMENT PAYMENT**

10            **4.1**     In full satisfaction of all potential civil penalties, additional settlement payments,  
11 attorney’s fees, and costs, Zinpro/Impact Labs shall make a total payment of \$30,000.00  
12 (“Total Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”).  
13 Zinpro/Impact Labs shall make this payment by wire transfer to ERC’s escrow account, for  
14 which ERC will give Zinpro/Impact Labs the necessary account information. The Total  
15 Settlement Amount shall be apportioned as follows:

16            **4.2**     \$3,000.00 shall be considered a civil penalty pursuant to California Health and  
17 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$2,250.00) of the civil penalty to the  
18 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
19 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
20 Code section 25249.12(c). ERC will retain the remaining 25% (\$750.00) of the civil penalty.

21            **4.3**     \$4,178.93 shall be distributed to ERC as reimbursement to ERC for reasonable  
22 costs incurred in bringing this action.

23            **4.4**     \$9,180.00 shall be distributed to Michael Freund as reimbursement of ERC’s  
24 attorney’s fees, \$1,080.00 shall be distributed to Ryan Hoffman as reimbursement of ERC’s  
25 attorney’s fees, while \$12,561.07 shall be distributed to ERC for its in-house legal fees. Except  
26 as explicitly provided herein, each Party shall bear its own fees and costs.

27            **4.6**     In the event that Zinpro/Impact Labs fails to remit the Total Settlement Amount  
28 owed under Section 4 of this Consent Judgment on or before the Due Date, Zinpro/Impact Labs

1 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC  
2 shall provide written notice of the delinquency to Zinpro/Impact Labs via electronic mail. If  
3 Zinpro/Impact Labs fails to deliver the Total Settlement Amount within five (5) days from the  
4 written notice, the Total Settlement Amount shall accrue interest at the statutory judgment  
5 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,  
6 Zinpro/Impact Labs agrees to pay ERC's reasonable attorney's fees and costs for any efforts to  
7 collect the payment due under this Consent Judgment.

## 8 **5. MODIFICATION OF CONSENT JUDGMENT**

9 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
10 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or  
11 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a  
12 modified consent judgment.

13 **5.2** If Zinpro/Impact Labs seeks to modify this Consent Judgment under Section 5.1,  
14 then Zinpro/Impact Labs must provide written notice to ERC of its intent ("Notice of Intent").  
15 If ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent,  
16 then ERC must provide written notice to Zinpro/Impact Labs within thirty (30) days of  
17 receiving the Notice of Intent. If ERC notifies Zinpro/Impact Labs in a timely manner of  
18 ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as  
19 required in this Section. The Parties shall meet in person or via telephone within thirty (30)  
20 days of ERC's notification of its intent to meet and confer. Within thirty (30) days of such  
21 meeting, if ERC disputes the proposed modification, ERC shall provide to Zinpro/Impact Labs  
22 a written basis for its position. The Parties shall continue to meet and confer for an additional  
23 thirty (30) days in an effort to resolve any remaining disputes. Should it become necessary, the  
24 Parties may agree in writing to different deadlines for the meet-and-confer period.

25 **5.3** In the event that Zinpro/Impact Labs initiates or otherwise requests a  
26 modification under Section 5.1, and the meet and confer process leads to a joint motion or  
27 application of the Consent Judgment, Zinpro/Impact Labs shall reimburse ERC its costs and  
28

1 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and  
2 arguing the motion or application.

3       **5.4** Where the meet-and-confer process does not lead to a joint motion or application  
4 in support of a modification of the Consent Judgment, then either Party may seek judicial relief  
5 on its own. In any such contested court proceeding, either Party may seek any attorney's fees  
6 and costs incurred pursuant to California Code of Civil Procedure section 1021.5.

7       **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
8       **JUDGMENT**

9       **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
10 this Consent Judgment.

11       **6.2** If ERC alleges that Zinpro/Impact labs is in violation of the injunctive terms set  
12 forth in Section 4 of this agreement, then ERC shall inform Zinpro/Impact Labs in a reasonably  
13 prompt manner including providing sufficient specificity to permit Zinpro/Impact Labs to  
14 identify the reasoning behind ERC's contention. Zinpro/Impact Labs shall, within thirty (30)  
15 days following such notice, provide ERC with information demonstrating Zinpro/Impact Labs'  
16 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve  
17 the matter prior to ERC taking any further legal action.

18       **7. APPLICATION OF CONSENT JUDGMENT**

19       This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
20 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
21 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
22 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
23 application to any Covered Product which is distributed or sold exclusively outside the State of  
24 California.

25       **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

26       **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
27 on behalf of itself and in the public interest, and Zinpro/Impact Labs and any other Defendants  
28 and their respective officers, directors, shareholders, employees, agents, parent companies,

1 subsidiaries, divisions, manufacturers, suppliers, franchisees, licensors, licensees, customers  
2 (not including private label customers of Zinpro/Impact Labs), distributors, wholesalers,  
3 marketplace hosts, e-tailers, retailers, and all other upstream and downstream entities in the  
4 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
5 of them (individually a "Released Party" and collectively, "Released Parties") and shall have  
6 preclusive effect with respect to any violation of Proposition 65 that was alleged in the Notices  
7 or Complaint against any Released Party or the Released Parties. ERC, on behalf of itself and  
8 in the public interest, hereby fully releases and discharges the Released Parties from any and  
9 all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs,  
10 and expenses asserted, or that could have been asserted from the handling, use, or consumption  
11 of the Covered Products, as to any alleged violation of Proposition 65 or its implementing  
12 regulations arising from the failure to provide Proposition 65 warnings on the Covered  
13 Products regarding lead and/or cadmium up to and including the Compliance Date.

14 **8.2** ERC on its own behalf only, and Zinpro/Impact Labs on its own behalf only,  
15 further waive and release any and all claims they may have against each other for all actions or  
16 statements made or undertaken in the course of seeking or opposing enforcement of Proposition  
17 65 in connection with the Notices and Complaint up through and including the Compliance  
18 Date, provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek  
19 to enforce the terms of this Consent Judgment.

20 **8.3** It is possible that other claims not known to the Parties, arising out of the facts  
21 alleged in the Notices and Complaint or that could have been brought in the Notices and  
22 Complaint will develop or be discovered. ERC on behalf of itself only, and Zinpro/Impact  
23 Labs on behalf of itself only, acknowledge that this Consent Judgment is expressly intended to  
24 cover and include all such claims up through and including the Effective Date, including all  
25 rights of action therefore. ERC and Zinpro/Impact Labs acknowledge that the claims released  
26 in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless waive California  
27 Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542  
28 reads as follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
3 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
4 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
5 OR HER SETTLEMENT WITH THE DEBTOR.

6 ERC on behalf of itself only, and Zinpro/Impact Labs on behalf of itself only, acknowledge and  
7 understand the significance and consequences of this specific waiver of California Civil Code  
8 section 1542.

9 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
10 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures  
11 to lead and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

12 **8.5** Nothing in this Consent Judgment is intended to apply to any of Zinpro/Impact  
13 Labs' products other than the Covered Products.

## 14 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

15 In the event that any of the provisions of this Consent Judgment are held by a court to be  
16 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

## 17 **10. GOVERNING LAW**

18 The terms and conditions of this Consent Judgment shall be governed by and construed in  
19 accordance with the laws of the State of California.

## 20 **11. PROVISION OF NOTICE**

21 All notices required to be given to either Party to this Consent Judgment by the other shall  
22 be in writing and sent to the following persons listed below via first-class mail. Courtesy copies  
23 via email may also be sent.

### 24 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

25 Chris Heptinstall, Executive Director, Environmental Research Center  
26 3111 Camino Del Rio North, Suite 400  
27 San Diego, CA 92108  
28 Tel: (619) 500-3090  
Email: chris\_erc501c3@yahoo.com

With a copy to:  
Michael Freund  
Ryan Hoffman  
Michael Freund & Associates

1 1919 Addison Street, Suite 105  
2 Berkeley, CA 94704  
3 Telephone: (510) 540-1992  
4 Facsimile: (510) 540-5543

5 ZINPRO CORPORATION  
6 c/o Dorsey & Whitney LLP  
7 50 South 6<sup>th</sup> Street  
8 Minneapolis, MN 55402  
9 Attention: Mark Kaster  
10 612-340-7815

11 kaster.mark@dorsey.com

12 IMPACT LABS, INC.  
13 c/o Dorsey & Whitney LLP  
14 50 South 6<sup>th</sup> Street  
15 Minneapolis, MN 55402  
16 Attention: Mark Kaster  
17 612-340-7815

18 kaster.mark@dorsey.com

19 With a copy to:  
20 Kent J. Schmidt  
21 Dorsey & Whitney LLP  
22 600 Anton Boulevard, Suite 2000  
23 Costa Mesa, CA 92626  
24 Telephone: (714) 800-1400  
25 Facsimile: (714) 800-1499

## 26 **12. COURT APPROVAL**

27 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
28 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
Consent Judgment.

**12.2** If the California Attorney General objects to any term in this Consent Judgment,  
the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible



1 prior to the hearing on the motion.

2       **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
3 void and have no force or effect.

### 4       **13. EXECUTION AND COUNTERPARTS**

5       This Consent Judgment may be executed in counterparts, which taken together shall be  
6 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid  
7 as the original signature.

### 8       **14. DRAFTING**

9       The terms of this Consent Judgment have been reviewed by the respective counsel for each  
10 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
11 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
12 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
13 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
14 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
15 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
16 equally in the preparation and drafting of this Consent Judgment.

### 17       **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

18       If a dispute arises with respect to either Party's compliance with the terms of this Consent  
19 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in  
20 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be  
21 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

### 22       **16. ENFORCEMENT**

23       ERC may, by motion or order to show cause before the Superior Court of Alameda  
24 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
25 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
26 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
27 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
28 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,

1 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by  
2 law for failure to comply with Proposition 65 or other laws.

3 **17. ENTIRE AGREEMENT, AUTHORIZATION**

4 **17.1** This Consent Judgment contains the sole and entire agreement and  
5 understanding of the Parties with respect to the entire subject matter herein, and any and all  
6 prior discussions, negotiations, commitments, and understandings related hereto. No  
7 representations, oral or otherwise, express or implied, other than those contained herein have  
8 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
9 herein, shall be deemed to exist or to bind any Party.

10 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
11 authorized by the Party he or she represents to stipulate to this Consent Judgment.

12 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
13 **CONSENT JUDGMENT**

14 This Consent Judgment has come before the Court upon the request of the Parties. The  
15 Parties request the Court to fully review this Consent Judgment and, being fully informed  
16 regarding the matters which are the subject of this action, to:

17 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
18 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
19 been diligently prosecuted, and that the public interest is served by such settlement; and

20 (2) Make the findings pursuant to California Health and Safety Code section  
21 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

22 **IT IS SO STIPULATED:**

23 Dated: 8/7/, 2017

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By: 

Chris Heptinstall, Executive Director

1 Dated: 8-7-17, 2017

ZINPRO CORPORATION

William Scrimgeour

By: William Scrimgeour  
Its: President and CEO

5 Dated: 8-7-17, 2017

IMPACT LABS, INC.

Scott Huhner

By: Scott Huhner  
Its: General Manager

8 **APPROVED AS TO FORM:**

11 Dated: \_\_\_\_\_, 2017

MICHAEL FREUND & ASSOCIATES

12 By: \_\_\_\_\_

13 Michael Freund  
14 Ryan Hoffman  
15 Attorneys for Plaintiff Environmental  
Research Center, Inc.

16 Dated: \_\_\_\_\_, 2017

DORSEY & WHITNEY LLP

18 By: \_\_\_\_\_

19 Kent J. Schmidt  
20 Mark R. Kaster  
21 Attorneys for Defendants Zinpro  
22 Corporation, and Impact Labs, Inc.

23 **ORDER AND JUDGMENT**

24 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is  
25 approved and Judgment is hereby entered according to its terms.

26 IT IS SO ORDERED, ADJUDGED AND DECREED.

27 Dated: \_\_\_\_\_, 2017

28 \_\_\_\_\_  
Judge of the Superior Court

1 Dated: \_\_\_\_\_, 2017

ZINPRO CORPORATION

2  
3 By: \_\_\_\_\_  
4 Its: \_\_\_\_\_

5 Dated: \_\_\_\_\_, 2017

IMPACT LABS, INC.

6  
7 By: \_\_\_\_\_  
8 Its: \_\_\_\_\_

9 **APPROVED AS TO FORM:**

10 Dated: 8/7/, 2017

MICHAEL FREUND & ASSOCIATES

12 By: 

13 Michael Freund  
14 Ryan Hoffman  
15 Attorneys for Plaintiff Environmental  
Research Center, Inc.

16 Dated: 8/7, 2017

DORSEY & WHITNEY LLP

18 By: 

19 Kent J. Schmidt  
20 Mark R. Kaster  
21 Attorneys for Defendants Zinpro  
22 Corporation, and Impact Labs, Inc.

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27 Dated: \_\_\_\_\_, 2017

28 \_\_\_\_\_  
Judge of the Superior Court

1 Dated: \_\_\_\_\_, 2017

ZINPRO CORPORATION

2  
3 By: \_\_\_\_\_  
4 Its: \_\_\_\_\_

5 Dated: \_\_\_\_\_, 2017


IMPACT LABS, INC.

6  
7 By: \_\_\_\_\_  
8 Its: \_\_\_\_\_

9 **APPROVED AS TO FORM:**

10  
11 Dated: 8/7/, 2017

MICHAEL FREUND & ASSOCIATES

12 By:   
13 Michael Freund  
14 Ryan Hoffman  
15 Attorneys for Plaintiff Environmental  
Research Center, Inc.

16 Dated: \_\_\_\_\_, 2017

DORSEY & WHITNEY LLP

17  
18 By: \_\_\_\_\_  
19 Kent J. Schmidt  
20 Mark R. Kaster  
21 Attorneys for Defendants Zinpro  
22 Corporation, and Impact Labs, Inc.

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27 Dated: \_\_\_\_\_, 2017

28 \_\_\_\_\_  
Judge of the Superior Court

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.  
Ryan Hoffman, Esq.

OF COUNSEL:  
Denise Ferkich Hoffman, Esq.

February 24, 2017

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET SEQ.*  
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Zinpro Corporation, individually and doing business as 360Cut  
Impact Labs, Inc., individually and doing business as 360Cut**

**Consumer Products and Listed Chemicals.** The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. 360°Cut Performance Supplements 360Nitro Drive Candy Tarts - Lead
2. 360°Cut Performance Supplements 360Nitro Drive Cool Blue Razz - Lead
3. 360°Cut Performance Supplements 360PRE Pre-Workout Activator Pineapple Passion - Lead
4. 360°Cut Performance Supplements 360PRE Pre-Workout Activator Cotton Candy - Lead
5. 360°Cut Performance Supplements 360PRO Whey Premium Whey Protein Performance Blend Chocolate Silk – Lead, Cadmium
6. 360°Cut Performance Supplements 360Nitro Drive Green Apple - Lead
7. 360°Cut Performance Supplements 360Sport BCAA & MCT Formula Mango - Lead
8. 360°Cut Performance Supplements 360Amino Energize BCAA And Natural Energy Formula Cherry Limeade - Lead
9. 360°Cut Performance Supplements 360Amino Energize BCAA And Natural Energy Formula Green Apple - Lead



**10. 360°Cut Performance Supplements 360Amino Energize BCAA And Natural Energy Formula Watermelon - Lead**

**11. 360°Cut Performance Supplements 360Pump Stimulant-Free Pump Enhancer Unflavored - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.


**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least February 24, 2014, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at [rrhoffma@gmail.com](mailto:rrhoffma@gmail.com).**

Sincerely,



Ryan Hoffman

**Attachments**

Certificate of Merit

Certificate of Service

OEHHA Summary (to Zinpro Corporation, individually and doing business as 360Cut, Impact Labs, Inc., individually and doing business as 360Cut, and their Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Zinpro Corporation, individually and doing business as 360Cut, and Impact Labs, Inc., individually and doing business as 360Cut**

I, Ryan Hoffman, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: February 24, 2017



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Ryan Hoffman

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On February 24, 2017, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Zinpro Corporation, individually  
and doing business as 360Cut  
10400 Viking Drive, Suite 240  
Eden Prairie, MN 55344

Registered Agent for Impact Labs, Inc.,  
individually and doing business as 360Cut,  
for Service of Process  
10400 Viking Drive, Suite 240  
Eden Prairie, MN 55344

Current CEO or President  
Impact Labs, Inc., individually  
and doing business as 360Cut  
10400 Viking Drive, Suite 240  
Eden Prairie, MN 55344

CT Corporation System  
(Impact Labs, Inc., individually  
and doing business as 360Cut's Registered  
Agent for Service of Process)  
818 West 7<sup>th</sup> Street, Suite 930  
Los Angeles, CA 90017

Current CEO or President  
Zinpro Corporation, individually  
and doing business as 360Cut  
470 Lake Street  
Excelsior, MN 55331

Registered Agent for Zinpro Corporation, individually  
and doing business as 360Cut, for Service of Process  
10400 Viking Drive, Suite 240  
Eden Prairie, MN 55344

Current CEO or President  
Impact Labs, Inc., individually  
and doing business as 360Cut  
470 Lake Street  
Excelsior, MN 55331

CT Corporation System  
(Zinpro Corporation, individually and doing business  
as 360Cut's Registered Agent for Service of Process)  
818 West 7<sup>th</sup> Street, Suite 930  
Los Angeles, CA 90017

Current CEO or President  
Zinpro Corporation, individually  
and doing business as 360Cut  
909 South 12<sup>th</sup> Street  
Broken Arrow, OK 74012

Current CEO or President  
Impact Labs, Inc., individually  
and doing business as 360Cut  
909 South 12<sup>th</sup> Street  
Broken Arrow, OK 74012

On February 24, 2017, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On February 24, 2017, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

February 24, 2017

Page 5

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

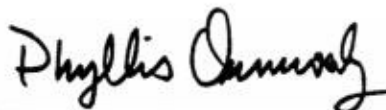
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On February 24, 2017, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on February 24, 2017, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

February 24, 2017

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Service List

District Attorney, Alameda County  
1225 Fallon Street, Suite 900  
Oakland, CA 94612

District Attorney, Alpine  
County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador  
County  
708 Court Street, Suite 202  
Jackson, CA 95642

District Attorney, Butte  
County  
25 County Center Drive, Suite  
245  
Oroville, CA 95965

District Attorney, Calaveras  
County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa  
County  
346 Fifth Street Suite 101  
Colusa, CA 95932

District Attorney, Del Norte  
County  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney, El Dorado  
County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno  
County  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

District Attorney, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial  
County  
940 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings  
County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Los Angeles  
County  
210 West Temple Street, Suite  
18000  
Los Angeles, CA 90012

District Attorney, Madera  
County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin  
County  
3501 Civic Center Drive,  
Room 130  
San Rafael, CA 94903

District Attorney, Mariposa  
County Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino  
County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced  
County  
550 W. Main Street  
Merced, CA 95340

District Attorney, Modoc  
County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Nevada  
County  
201 Commercial Street  
Nevada City, CA 95959

District Attorney, Orange  
County  
401 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer  
County  
10810 Justice Center Drive,  
Ste 240  
Roseville, CA 95678

District Attorney, Plumas  
County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, San Benito  
County  
419 Fourth Street, 2nd Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
316 N. Mountain View  
Avenue  
San Bernardino, CA 92401

District Attorney, San Diego  
County  
330 West Broadway, Suite  
1300  
San Diego, CA 92101

District Attorney, San Mateo  
County  
400 County Ctr., 3rd Floor  
Redwood City, CA 94063

District Attorney, Santa  
Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Cruz  
County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
County  
PO Box 457  
Downieville, CA 95936

District Attorney, Siskiyou  
County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano  
County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Stanislaus  
County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter  
County  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama  
County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tuolumne  
County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Yuba  
County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

Los Angeles City Attorney's  
Office  
City Hall East  
200 N. Main Street, Suite 800  
Los Angeles, CA 90012

San Diego City Attorney's  
Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco, City Attorney  
City Hall, Room 234  
1 Dr Carlton B Goodlett PL  
San Francisco, CA 94102

San Jose City Attorney's  
Office  
200 East Santa Clara Street,  
16th Floor  
San Jose, CA 95113



**Appendix A**

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “Proposition 65”). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

*WHAT DOES PROPOSITION 65 REQUIRE?*

**The “Proposition 65 List.”** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

[http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and



reasonable.” This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Periods.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

***Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.*** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### ***HOW IS PROPOSITION 65 ENFORCED?***

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

The notice is reproduced here:

Date: February 24, 2017

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

## **SPECIAL COMPLIANCE PROCEDURE**

### **PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

**The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:**

- 1. You have actually taken the corrective steps that you have certified in this form**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

### **PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

☐ Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

☐ A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

☐ Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

☐ Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

### **IMPORTANT NOTES:**

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date: February 24, 2017

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.  
Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108  
Phone number: 619-500-3090

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- ☐ Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- ☐ Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- ☐ Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

**Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

---

Signature of alleged violator or authorized representative Date

---

Name and title of signatory

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

<sup>2</sup> See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

## **HISTORY**

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 9/18/15 Register 2015, No. 38

27 CCR Appendix A, 27 CA ADC Appendix A



## **EXHIBIT B**

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**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.  
Ryan Hoffman, Esq.

OF COUNSEL:  
Denise Ferkich Hoffman, Esq.

May 26, 2017

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with this product. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Zinpro Corporation, individually and doing business as 360Cut  
Impact Labs, Inc., individually and doing business as 360Cut**

**Consumer Product and Listed Chemical.** The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels are:

**360°Cut Performance Supplements 360Amino Energize BCAA And Natural Energy Formula  
Peach Lemonade Iced Tea - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least May 26, 2014, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using this product with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above product in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Zinpro Corporation, individually and doing business as 360Cut, Impact Labs, Inc., individually and doing business as 360Cut, and their Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Zinpro Corporation, individually and doing business as 360Cut, and Impact Labs, Inc., individually and doing business as 360Cut**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 26, 2017



Michael Freund

**CERTIFICATE OF SERVICE PURSUANT 27 CCR § 25903**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On May 26, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Zinpro Corporation, individually  
and doing business as 360Cut  
10400 Viking Drive, Suite 240  
Eden Prairie, MN 55344

Registered Agent for Impact Labs, Inc.,  
individually and doing business as 360Cut,  
for Service of Process  
10400 Viking Drive, Suite 240  
Eden Prairie, MN 55344

Current CEO or President  
Impact Labs, Inc., individually  
and doing business as 360Cut  
10400 Viking Drive, Suite 240  
Eden Prairie, MN 55344

CT Corporation System  
(Impact Labs, Inc., individually  
and doing business as 360Cut's Registered  
Agent for Service of Process)  
818 West 7<sup>th</sup> Street, Suite 930  
Los Angeles, CA 90017

Current CEO or President  
Zinpro Corporation, individually  
and doing business as 360Cut  
470 Lake Street  
Excelsior, MN 55331

Registered Agent for Zinpro Corporation, individually  
and doing business as 360Cut, for Service of Process  
10400 Viking Drive, Suite 240  
Eden Prairie, MN 55344

Current CEO or President  
Impact Labs, Inc., individually  
and doing business as 360Cut  
470 Lake Street  
Excelsior, MN 55331

CT Corporation System  
(Zinpro Corporation, individually and doing business  
as 360Cut's Registered Agent for Service of Process)  
818 West 7<sup>th</sup> Street, Suite 930  
Los Angeles, CA 90017

Current CEO or President  
Zinpro Corporation, individually  
and doing business as 360Cut  
909 South 12<sup>th</sup> Street  
Broken Arrow, OK 74012

Current CEO or President  
Impact Labs, Inc., individually  
and doing business as 360Cut  
909 South 12<sup>th</sup> Street  
Broken Arrow, OK 74012

On May 26, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On May 26, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
[gregory.alker@sfgov.org](mailto:gregory.alker@sfgov.org)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
[DAConsumer.Environmental@sjcda.org](mailto:DAConsumer.Environmental@sjcda.org)

Allison Haley, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
[edobroth@co.slo.ca.us](mailto:edobroth@co.slo.ca.us)

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
[EPU@da.sccgov.org](mailto:EPU@da.sccgov.org)



May 26, 2017

Page 6

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

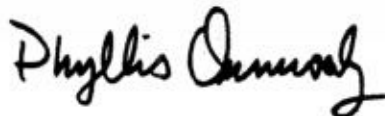
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On May 26, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on May 26, 2017, in Fort Oglethorpe, Georgia.



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Phyllis Dunwoody

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

May 26, 2017

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Service List

District Attorney, Alameda County  
1225 Fallon Street, Suite 900  
Oakland, CA 94612

District Attorney, Alpine  
County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador  
County  
708 Court Street, Suite 202  
Jackson, CA 95642

District Attorney, Butte  
County  
25 County Center Drive, Suite  
245  
Oroville, CA 95965

District Attorney, Calaveras  
County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa  
County  
346 Fifth Street Suite 101  
Colusa, CA 95932

District Attorney, Del Norte  
County  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney, El Dorado  
County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno  
County  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

District Attorney, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial  
County  
940 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings  
County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Los Angeles  
County  
Hall of Justice  
211 West Temple St., Ste 1200  
Los Angeles, CA 90012

District Attorney, Madera  
County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin  
County  
3501 Civic Center Drive,  
Room 130  
San Rafael, CA 94903

District Attorney, Mariposa  
County Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino  
County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced  
County  
550 W. Main Street  
Merced, CA 95340

District Attorney, Modoc  
County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Nevada  
County  
201 Commercial Street  
Nevada City, CA 95959

District Attorney, Orange  
County  
401 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer  
County  
10810 Justice Center Drive,  
Ste 240  
Roseville, CA 95678

District Attorney, Plumas  
County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, San Benito  
County  
419 Fourth Street, 2nd Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
316 N. Mountain View  
Avenue  
San Bernardino, CA 92401

District Attorney, San Diego  
County  
330 West Broadway, Suite  
1300  
San Diego, CA 92101

District Attorney, San Mateo  
County  
400 County Ctr., 3rd Floor  
Redwood City, CA 94063

District Attorney, Santa  
Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Cruz  
County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
County  
PO Box 457  
Downieville, CA 95936

District Attorney, Siskiyou  
County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano  
County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Stanislaus  
County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter  
County  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama  
County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tuolumne  
County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Yuba  
County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

Los Angeles City Attorney's  
Office  
City Hall East  
200 N. Main Street, Suite 800  
Los Angeles, CA 90012

San Diego City Attorney's  
Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco, City Attorney  
City Hall, Room 234  
1 Dr Carlton B Goodlett PL  
San Francisco, CA 94102

San Jose City Attorney's  
Office  
200 East Santa Clara Street,  
16th Floor  
San Jose, CA 95113

**Appendix A**

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

*WHAT DOES PROPOSITION 65 REQUIRE?*

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

[http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and

reasonable.” This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Periods.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA’s website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA’s website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

***Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.*** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### ***HOW IS PROPOSITION 65 ENFORCED?***

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;



- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

The notice is reproduced here:



Date: May 26, 2017

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

## **SPECIAL COMPLIANCE PROCEDURE**

### **PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

**The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:**

- 1. You have actually taken the corrective steps that you have certified in this form**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

### **PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

☐ Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

☐ A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

☐ Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

☐ Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

### **IMPORTANT NOTES:**

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date: May 26, 2017

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.  
Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108  
Phone number: 619-500-3090

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- ☐ Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- ☐ Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- ☐ Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

**Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

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Signature of alleged violator or authorized representative Date

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Name and title of signatory

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

<sup>2</sup> See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

## **HISTORY**

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
  2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
  3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
  4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
  5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).
- This database is current through 9/18/15 Register 2015, No. 38
- 27 CCR Appendix A, 27 CA ADC Appendix A